

(b) not knowingly take or fail to take any action if the intent of such action or failure to act is or would be to cause any representation or warranty of Sellers made in Article IV to be untrue or incorrect if such representation or warranty were made immediately following the taking or failure to take such action.

(c) not waive, release, grant, transfer or permit to lapse any rights of value to which any Seller or any Operating Subsidiary has any right on the date of this Agreement other than immaterial waivers in the Ordinary Course of Business,

(d) comply in all material respects with all provisions of any Assumed Contract to which such Seller or Operating Subsidiary is a party;

(e) comply in all material respects with all applicable Laws that relate to or affect the operation of the Business.

(f) not enter into any new or amended contract, agreement, side letter or memorandum of understanding with any unions representing Employees,

(g) notify Buyer in writing of any incidents or accidents occurring on or after the date of this Agreement involving any property owned or operated by any Seller or Operating Subsidiary that resulted or could reasonably be expected to result in damages or losses in excess of One Million Dollars (\$1,000,000),

(h) notify Buyer in writing of the commencement of any material Litigation against any Seller or any Operating Subsidiary,

(i) not enter into any business or arrangement or otherwise take any action that would reasonably be expected to have a material adverse impact on the ability of the Sellers and the Buyer to obtain any material consents of Governmental Entities necessary in connection with this Agreement,

(j) not enter into any Contract containing covenants purporting to limit the freedom of any Seller or any of their respective Affiliates to compete or participate in any line of business or activities in any geographic area ("Non-Compete Covenants"),

(k) not enter into any material Contract or renew, fail to renew, extend, terminate, reject, amend, modify or waive any material provision of any Contract designated with an asterisk on Schedule 4.20 to the Disclosure Schedules, except (i) that if within five (5) Business Days after notice provided by Sellers to Buyer of its intent to take any such actions, Buyer does not object in writing to Sellers, then Buyer shall be deemed to have provided consent to such action and (ii) for those actions for which a motion has been filed with the Bankruptcy Court on or prior to the date hereof, and

(l) not enter into any agreement or understanding in excess of twelve months with any other party containing any exclusivity or similarly restrictive provision.

Notwithstanding anything herein to the contrary, Sellers shall have the right to consummate a sale of (i) the shared web hosting business segment of the Business (the "Shared Hosting Business"), (ii) the Owned Real Property, and/or (iii) the assets or capital stock of Shared Technologies, and retain any proceeds from any such transactions as an Excluded Asset.

Notwithstanding anything herein to the contrary, Allegiance shall have the right, subject to Bankruptcy Court approval but only after the Sale Order Approval Date, to pay up to \$100 million of the amount outstanding under its Senior Credit Agreement.

## 6.2 Transition Operating Agreement

(a) As promptly as practicable after the execution and delivery of this Agreement and in any event within the earlier of (A) forty-five (45) days thereafter and (B) the Closing Date, Sellers and Buyer shall use their best efforts to (i) identify the Non-Transferred Assets and (ii) design and implement a plan (the "Transition Plan") to effectuate the separation of the Non-Transferred Assets to be retained by Sellers, in order to facilitate the transfer of the Non-Transferred Assets to Buyer as promptly as possible upon subsequent receipt of any necessary consents. Such plan shall include the ability of Sellers to (1) retain the stock of any Operating Subsidiary containing a Non-Transferred Asset or (2) distribute any Non-Transferred Asset to ATI, ATCW, any of their Affiliates or a trust established for the purpose of acquiring each non-Transferred Asset. Subject to applicable law, Buyer shall have ultimate discretion regarding the terms of such Transition Plan, provided, that Buyer shall not require the transfer of any Non-Transferred Assets in violation of any contractual obligations of Sellers or that would otherwise adversely impact Sellers', Operating Subsidiaries' or Shared Technologies' Chapter 11 estate. The Transition Plan shall be subject to amendment from time to time as reasonably appropriate to achieve the foregoing objective and permit the Closing to occur on the Closing Date. Sellers and Buyer shall exercise their best efforts to implement the Transition Plan, as it may be amended from time to time, to provide for separation of the Non-Transferred Assets prior to the Closing and the transfer of Non-Transferred Assets as promptly as possible.

(b) Sellers and Buyer shall enter into an Operating Agreement substantially in the form of Exhibit H hereto effective as of the Early Funding Date. Pursuant to and as set forth in the Operating Agreement, Buyer shall agree to provide management and related services to Sellers, on behalf of Sellers and subject to the ultimate direction of Sellers and consistent with all applicable law and regulation. Pursuant to Sections 1.1 and 2.5, (i) at such time as any necessary FCC Consent and/or State PUC Consent shall have been issued and (ii) the parties shall have received any necessary ILEC consents, or the notice period shall have expired, for the assignment of any Required Interconnection Agreements, the corresponding Non-Transferred Assets shall be transferred to Buyer and Buyer shall assume all related Assumed Liabilities.

6.3 Reorganization Process

(a) Unless Sellers shall have delivered an Early Closing Election, Sellers shall, as soon as reasonably practicable after the date hereof, prepare and file with the Bankruptcy Court (i) a Disclosure Statement with respect to the Bankruptcy Plan meeting the requirements of section 1125(b) of the Bankruptcy Code (the "Disclosure Statement"), (ii) a motion to approve the Disclosure Statement, and (iii) the Bankruptcy Plan (items (i) through (iii) collectively, the "Approval Motions") Unless Sellers shall have delivered an Early Closing Election, the Bankruptcy Plan, any and all exhibits and attachments to the Bankruptcy Plan, the Disclosure Statement, and the other Approval Motions and the orders approving the same (including the Confirmation Order) to the extent any of the foregoing adversely impacts the Sale Assets shall be reasonably acceptable in form and substance to the Buyer. Sellers and the Operating Subsidiaries shall have the sole discretion to negotiate, propose and implement the terms of the Bankruptcy Plan as they relate to the treatment of creditors and the distributions on account of such creditors' claims in any manner not inconsistent with the Transaction Documents. Until the Closing, the Sellers shall consult with the Buyer and obtain Buyer's consent, which shall not be unreasonably withheld, prior to taking any material action with respect to the Cases. Unless Sellers shall have delivered an Early Closing Election, the Buyer shall provide the Sellers with all information concerning the Buyer required to be included in the Disclosure Statement. This Section 6.3(a) shall not be applicable if Sellers shall have delivered an Early Closing Election.

(b) The Confirmation Order shall provide, among other things, that (i) the Bankruptcy Plan has been proposed in good faith and not by any means forbidden by Law, (ii) Buyer and its Affiliates, and their respective members, shareholders, partners and Representatives are released from any claims of any party related to Sellers, the Business or the Cases, whether arising prior to or during the Cases, except for the Assumed Liabilities, (iii) Buyer and its Affiliates, and their respective members, shareholders, partners and Representatives have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all their respective activities relating to the solicitation of acceptances to the Bankruptcy Plan and their participation in the activities described in section 1125 of the Bankruptcy Code and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation and any other release provisions set forth in the Bankruptcy Plan and (iv) all Persons are enjoined from commencing any action in violation of such release and exculpation provisions. This Section 6.3(b) shall not be applicable if Sellers shall have delivered an Early Closing Election.

(c) The Sellers shall take such actions and cause any filings and actions to be taken by one or more of the Sellers as applicable in compliance with the dates set forth in the timetable attached hereto as Exhibit J, provided, however, that in the event Sellers shall have delivered an Early Closing Election, any such filings and actions relating to the Bankruptcy Plan or Disclosure Statement shall no longer be required or subject to the timetable attached hereto as Exhibit J.

(d) Prior to the Closing, neither any Seller nor any Operating Subsidiary shall, without the prior written consent of Buyer:

(i) seek or consent to the conversion of the Cases to cases under chapter 7 of the Bankruptcy Code or the appointment of a trustee or examiner with managerial powers under section 1104 of the Bankruptcy Code,

(ii) consent to any relief from the automatic stay under section 362 of the Bankruptcy Code with respect to any Acquired Assets having an aggregate market value of more than \$150,000

(iii) file any plan of reorganization other than the Bankruptcy Plan, file any material amendment to the Bankruptcy Plan, consent to the reduction of the exclusivity period under section 1121 of the Bankruptcy Code for the filing of a plan of reorganization (the "Exclusivity Period") or fail timely to file motions seeking to obtain orders of the Bankruptcy Court extending the Exclusivity Period, provided, however, that in the event Sellers shall have delivered an Early Closing Election, this Section 6.3(d)(iii) shall be inapplicable.

(iv) sell or abandon, or file any motion to sell or abandon, any Acquired Assets, other than sales in the Ordinary Course of Business or except as contemplated by the Operational Restructuring Activities.

(v) commence or continue to prosecute Avoidance Actions against any Seller or Operating Subsidiary or related to the Business, or against any employee of, creditor of or other party to a contract with any Seller or Operating Subsidiary,

(vi) commence or continue any Claims that Sellers or any of their respective Affiliates may have against any active Employee of, creditor of or other party to an existing Contract with any Seller or Operating Subsidiary (other than Contracts that are Excluded Assets), or

(vii) authorize, or commit or agree to take, any of the foregoing actions

(e) At the Closing, Sellers shall reject in the Cases all Executory Contracts that do not constitute Assumed Contracts other than any such Executory Contracts (A) relating to the Excluded Assets or (B) assigned to any other Person. At Buyer's written request, Sellers shall delay the effective date of the rejection of any Executory Contract designated by Buyer, provided that, for any such delay in the effective date, Buyer shall be responsible for all expenses directly or indirectly arising due to such delay in effective date on or after the Closing Date. Provided, further, that if Buyer requests a delay in rejection of an Executory Contract that results in rejection beyond the Closing Date, then Sellers shall retain such Executory Contract and it shall be treated as a Non-Transferred Asset and subject to (i) Sections 2.5 and 6.2 hereof, and (ii) the Operating Agreement.

(f) At Buyer's reasonable direction and sole expense, Sellers (i) shall file all requisite pleadings with the Bankruptcy Court or any other applicable forum, to recharacterize any capital lease as a secured financing, (ii) agree, after the Sale Order Approval Date, to assume or reject any capital lease, in whole or in part, to the extent portions of such lease are severable, and (iii) agree to allow Buyer to participate in any negotiations with counterparties with respect to restructuring or recharacterizing the capital leases. The Sale Order shall provide that the Buyer has standing to participate in any disputes regarding such capital leases.

6.4 Insurance Effective upon the Closing, to the extent Allegiance's insurance policies are designated by Buyer as Non-Transferred Assets, Allegiance shall take all actions necessary to cause Buyer to be designated as an additional loss-payee on such policies and shall maintain such insurance policies on the same terms as currently in effect at Buyer's sole expense.

6.5 Access, Transition Committee, Information Rights

(a) Subject to any relevant Antitrust Laws, from the date hereof until the Closing Date, Sellers shall allow Buyer's employees and other Representatives during regular business hours (and in a manner so as not to interfere with the normal business operations of Sellers) to make such investigation of the Sellers' employees, the Business and Sellers' books and records related thereto, as Buyer reasonably deems necessary or advisable, and Sellers shall instruct Sellers' employees to cooperate in any such investigation. Buyer shall be permitted to make extracts from or to make copies of such books and records.<sup>1</sup>

(b) From and after the Closing Date, Buyer hereby acknowledges that it shall grant to Sellers upon Sellers' request full and complete access, as promptly as practicable but in no event no later than two (2) days after receiving a request, to any records related to Sellers' operation of the Business prior to the Closing Date, upon Sellers' request, and Sellers shall be permitted to copy, and retain a copy of, any such records. Buyer shall keep such records in a manner consistent with Buyer's past practice and such records shall not be destroyed until the later of seven (7) years from the Closing Date or the conclusion of all bankruptcy proceedings related to the Business. Sellers hereby agree that from and after the Closing Date they will grant to Buyer upon Buyer's reasonable request access during normal business hours (and instruct its employees to reasonably cooperate with Buyer), in a reasonably prompt manner but in any event no later than five (5) days after receiving a request, to any tax records relating to the Acquired Assets or to Allegiance's operation of the Business prior to the Closing Date (including any Tax Liabilities for which Buyer may be held liable). Buyer shall be permitted to copy, and retain a copy of, any such records (including any Tax Returns). To the extent that any Seller retains any books and records related to the Business, such Seller shall keep such records in a manner consistent with

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<sup>1</sup> Note During the period from the Early Funding Date through the Closing Date the Operating Agreement shall contain broad access rights.

Sellers' past practice and such records shall not be destroyed before such Seller offers such records to Buyer.

(c) Subject to any relevant Antitrust Laws, immediately upon the Bankruptcy Court approval of the Sale Order and subject to compliance with any regulatory restrictions, Allegiance and Buyer shall establish a joint transition committee (the "Committee") to plan the steps necessary to efficiently implement the purchase of the Business by Buyer and to agree upon changes to the Business which will increase operating efficiencies. The Committee will be chaired by a Buyer Representative, shall have one (1) individual from Communications Technology Advisors LLC ("CTA") (who shall be entitled to attend all meetings and receive all documents prepared for the Committee) shall have appropriate Representatives of both Allegiance and Buyer, and shall meet in person or telephonically as frequently as shall be reasonably determined by Buyer. The Committee shall establish working groups to discuss the following specific aspects of the transactions contemplated hereby: (i) human resources, (ii) network, (iii) operations, (iv) sales and marketing, (v) finance and (vi) information technology, and shall agree as promptly as possible as to actions that will be taken to more efficiently operate the Business prior to Closing, provided that no such actions implemented prior to Closing shall have, or be reasonably expected to have, a detrimental impact on the ability of Allegiance to conduct the auction in a manner customary in similar proceedings, and further provided that all such actions shall be conducted in full compliance with the relevant Antitrust Laws. All reasonable costs associated with the establishment and the operation of the Committee shall be borne by Buyer. Prior to any meetings of the Committee, Allegiance and Buyer shall implement appropriate procedures for the protection of the confidential information of both Allegiance and Buyer in the event the transaction is not concluded for any reason.

(d) As soon as practicable, but in no event less than fifteen (15) days after the end of each month, ATI shall provide Buyer with a copy of its monthly flash report, together with a performance report of the Total Retail Net Ending Lines (as of the end of the month covered by the flash report) and Total Gross End User Revenue (as of the end of the month covered by the flash report), including a certification as to the number of Scheduled Future Installs and Scheduled Future Disconnects as of the end of the month covered by the flash report.

6.6 Public Announcements Neither Seller nor any Operating Subsidiary shall issue a press release or otherwise make any public statements with respect to the transactions contemplated hereby, except as may be required by Law, by obligations pursuant to any listing agreement with any national securities exchange or over-the-counter market or with respect to filings to be made with the Bankruptcy Court in connection with this Agreement (in which case such Seller shall notify Buyer as promptly as practicable and prior to making such public statement), without the prior consent of Buyer, which consent shall not be unreasonably withheld or delayed. To the extent reasonably practicable, Buyer shall consult with ATI before Buyer issues any press release or otherwise makes any public statements with respect to the transactions contemplated hereby and consider any comments ATI may have with respect thereto.

6.7 Notification of Certain Matters Allegiance shall give prompt notice to Buyer, and Buyer shall give prompt notice to Allegiance, of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement and (ii) any written objection, litigation or administrative proceeding that challenges the transactions contemplated hereby or the entry of the Bidding Procedures Order or the Sale Order

6.8 Employees

(a) Sellers shall deliver to Buyer not later than fifteen (15) Business Days after the date of this Agreement a complete and accurate schedule (the "Employee Schedule") setting forth, as of a recent date prior to the delivery of the Employee Schedule, (x) the name and position of each Employee, (y) the annual base salary or hourly rate, as applicable, for each Employee and (z) the date each Employee commenced employment with Allegiance. Sellers and Buyer shall cooperate in identifying those employees for which Buyer shall offer full-time employment effective as of the Closing Date.

(b) Buyer anticipates extending offers of employment to substantially all of Allegiance's Employees who provide services related to or associated with the Acquired Assets. Buyer shall make offers of employment in accordance with its normal hiring practices. Those Employees who accept Buyer's offer of employment effective as of the Closing Date are referred to as the "Transferred Employees." Following the Closing, Buyer shall provide any Employee who does not receive an offer of employment from the Buyer and any Employee who receives an offer of employment which does not provide for the terms of employment described in Section 6.8(d) with severance benefits in accordance with Allegiance's severance policies and past practice, provided, however, any Transferred Employee shall not be eligible to receive severance benefits pursuant to this Agreement.

(c) Pursuant to the "Alternative Procedure" provided in section 5 of Revenue Procedure 96-60, 1996-2 C.B. 399, (i) Buyer and Sellers shall report on a predecessor/successor basis as set forth therein, (ii) Sellers will be relieved from filing a Form W-2 with respect to the Transferred Employees and (iii) Buyer will undertake to file (or cause to be filed) a Form W-2 for each such Transferred Employee for the year that includes the Closing Date (including the portion of such year that such Employee was employed by Allegiance). Sellers will provide Buyer on a timely basis with all payroll and employment-related information with respect to each such Employee.

(d)

(i) Buyer shall grant each Transferred Employee service credit with Sellers (based on the employment commencement date set forth in the Employee Schedule), for purposes of eligibility and participation in the benefit plans, programs and arrangements (including the vacation and the severance policies), of Buyer, excluding

service credit for benefit accruals under the defined benefit pension plan and eligibility for the retiree medical plan

(ii) Unless otherwise required by any collective bargaining agreement to which any of Buyer's employees are subject to as of the Closing Date, with respect to Transferred Employees who will be subject to such collective bargaining agreement after the Closing effective on the Closing Date, Buyer shall provide the Transferred Employees with (i) a salary or regular wage rate and bonus opportunity (if applicable) which is substantially the same in the aggregate as the salary or wage rate received or bonus opportunity available to such Transferred Employee immediately prior to the Closing, (ii) a job location no more than 75 miles from such Transferred Employee's current job location and (iii) health, welfare and other employee benefits on the same basis as similarly situated employees of Buyer (or an Affiliate of Buyer), as determined by Buyer and in accordance with the terms of the plans governing such benefits

(iii) As of the Closing Date, Buyer (or an Affiliate of Buyer) shall credit the Transferred Employees for all deductibles and out-of-pocket expenses incurred by the Transferred Employees with respect to such benefits during the calendar year in which the Closing Date occurs and shall further waive (to the extent waived under Sellers' employee benefit plans) all pre-existing conditions, exclusions and waiting periods under Buyer's employee benefit plans for Transferred Employees

(iv) Except as otherwise provided in this Agreement, Buyer shall not assume any Employee Benefit Plan or any liability or obligation thereunder, and, except as expressly provided in this Section 6.8, the terms of a Transferred Employee's employment with Buyer (or an Affiliate) after the Closing shall be upon such terms and conditions as Buyer, in its sole discretion, shall determine

(e) Sellers and any Operating Subsidiary shall cause the accounts of all Transferred Employees under any tax-qualified defined contribution plan maintained by Sellers or any Operating Subsidiary to become fully vested as of the Closing, and shall permit distribution of such accounts in accordance with the terms of any such plan. Notwithstanding the foregoing, Sellers or any Operating Subsidiary shall amend such defined contribution plan to permit the rollover of promissory notes evidencing outstanding participant loans of Transferred Employees, without default of such loan, to a tax-qualified defined contribution plan established by Buyer, and Buyer shall cause, as of a specified date within 90 days of Closing as determined by Buyer, such plan to accept such rollovers, provided that Allegiance has provided the Buyer evidence satisfactory to the Buyer of the qualified status of the Allegiance's Internal Revenue Code Section 401(k) arrangement under Internal Revenue Code Section 401(a). Buyer shall take all action necessary and appropriate to ensure that, as of the Closing, Buyer maintains a tax-qualified defined contribution plan

(f) Allegiance shall cause, and Buyer agrees to assume, the health care and dependent care flexible spending accounts (and any corresponding assets and liabilities thereto) maintained with respect to Transferred Employees under any cafeteria



plan maintained by Allegiance to be transferred to Buyer's flexible benefits plan in accordance with IRS Revenue Ruling 2002-32

(g) Allegiance shall not at any time between the date hereof and the Early Funding Date, or at any time prior to 60 days after the Early Funding Date, effectuate a "plant closing" or "mass layoff" as those terms are defined in the WARN Act affecting in whole or in part any site of employment, facility, operating unit or Employee, without complying with the notice requirements and other provisions of the WARN Act except to the extent arising from Buyer's actions, in which case Buyer shall be responsible for any Liabilities related thereto. In order to protect all parties, to the extent required by the WARN Act Sellers agree to give notice in compliance with the WARN Act in a form satisfactory to Buyer to all Employees required under the WARN Act to receive such notice not less than sixty (60) days and no more than ninety (90) days prior to the anticipated Closing Date, and shall repeat such notice, if necessary, due to any delay of Closing, provided, however to the extent any Seller is unable to provide notice in compliance with the WARN Act due to any act, omission or direction of Buyer, Buyer shall be responsible for any Liabilities related thereto.

(h) Except where prohibited by law, Sellers shall provide promptly to Buyer, at Buyer's request, any information or copies of personnel records (including addresses, dates of birth, dates of hire and dependent information) relating to the Transferred Employees or relating to the service of Transferred Employees with Sellers prior to the Closing. Sellers and Buyer shall each cooperate with the other and shall provide to the other such documentation, information and assistance as is reasonably necessary to effect the provisions of this Section 6.8(h)

(i) As part of the Transition Plan, certain Employees of Sellers will be retained by Sellers as of the Closing. Those Employees may or may not be Transferred Employees as referenced in this Section 6.8. The parties will cooperate in developing the Transition Plan such that, to the extent permitted by law, such Employees are subject to the same terms and conditions as they would have been if they had not been retained by Sellers at Closing, and instead had become Transferred Employees or been terminated, as the case may be, at Closing. For purposes of Sections 6.8(a), (b), (c), (d), (e), (f) and (h) in the case of an Employee who remains with the Sellers subsequent to the Closing Date for the purposes of continuing to conduct the Business with respect to the Non-Transferred Assets and who receives and accepts an offer of employment from the Buyer post-Closing, references to the "Closing Date" shall be replaced with the date of hire by the Buyer, or as otherwise specified in the Operating Agreement.

6.9 Further Agreements Sellers authorize and empower Buyer after the Closing Date to receive and to open all mail received by Buyer relating to the Acquired Assets, the Business or the Assumed Liabilities and to deal with the contents of such communications in any proper manner. Sellers shall (a) promptly deliver to Buyer, any mail or other communication received by them after the Closing Date, (b) promptly wire transfer in immediately available funds to Buyer, any cash, electronic credit or deposit received by Sellers and (c) promptly forward to Buyer, any checks or other

instruments of payment that it received, in each case relating to the Acquired Assets, the Business or the Assumed Liabilities. Buyer shall (a) promptly deliver to Sellers, any mail or other communication received by it after the Closing Date, (b) promptly wire transfer in immediately available funds to ATI, any cash, electronic credit or deposit received by Buyer and (c) promptly forward to ATI, any checks or other instruments of payment that it receives, in each case relating to the Excluded Assets or any Excluded Liabilities. From and after the Closing Date, Sellers shall refer all inquiries with respect to the Business, the Acquired Assets and the Assumed Liabilities to Buyer, and Buyer shall refer all inquiries with respect to the Excluded Assets and the Excluded Liabilities to Sellers.

#### 6.10 Payment of Transfer Taxes and Tax Filings

(a) Fifty percent (50%) of all Transfer Taxes arising out of the transfer of the Acquired Assets and any Transfer Taxes required to effect any recording or filing with respect thereto shall be paid by each of Buyer on the one hand and Sellers on the other hand. The parties shall use commercially reasonable efforts to have included in the Sale Order and Confirmation Order a provision that provides that the transfer of the Acquired Assets shall be free and clear of any stamp or similar taxes under section 1146(c) of the Bankruptcy Code. At least twenty (20) Business Days prior to Closing, Sellers shall submit to Buyer a list of all Transfer Taxes (by tax name, tax jurisdiction and general description of the Acquired Assets subject to such tax) that it anticipates collecting from Buyer at Closing. Buyer may submit to Sellers evidence that it believes such Transfer Tax should not be applicable. Sellers shall review such evidence in a timely and good faith manner and respond to Buyer prior to Closing. Sellers and Buyer shall cooperate to timely prepare and file any returns or other filings relating to such Transfer Taxes, including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes.

(b) Each party shall furnish or cause to be furnished to the others, upon request, as promptly as practicable, such information and assistance relating to the Acquired Assets and the Business as is reasonably necessary for filing of all Tax Returns, including any claim for exemption or exclusion from the application or imposition of any Taxes or making of any election related to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax Return.

(c) Sellers acknowledge and agree that Buyer shall have an administrative expense claim with respect to Sellers' share of any Transfer Taxes arising out of the transfer of the Acquired Assets under this Section 6.10 that have not been paid when due.

#### 6.11 Filing of Tax Returns

Sellers shall prepare and file, or cause to be prepared and filed, all Tax Returns for or on behalf of Sellers and any Affiliated Group that are required to be filed for periods that include or end on or prior to the Closing Date. Subject to Section 2.3(c),

Sellers shall pay, or shall cause to be paid, all Taxes due and payable by Sellers with respect to periods that include or end on or prior to the Closing Date when due

6.12 Proration of Taxes and Certain Charges Except as provided in Section 6.10, all real property Taxes, personal property Taxes or similar ad valorem obligations levied with respect to the Acquired Assets for any taxable period that includes the day before the Early Funding Date and ends after the Early Funding Date, whether imposed or assessed before or after the Early Funding Date, shall be prorated between Sellers and Buyer as of 12:01 A.M. on the Early Funding Date. If any Taxes subject to proration are paid by Buyer, on the one hand, or Sellers, on the other hand, the proportionate amount of such Taxes paid (or in the event a refund of any portion of such Taxes previously paid is received, such refund) shall be paid promptly by (or to) the other after the payment of such Taxes (or promptly following the receipt of any such refund). Notwithstanding the foregoing proration, any interest, penalties or additions to Tax relating to a Tax that is subject to proration shall be borne by the party whose actions or omissions gave rise to such item, and shall be reimbursed (and any refund remitted) consistent with the preceding sentence.

6.13 Best Efforts

(a) Subject to the terms and conditions of this Agreement, each of the parties hereto shall use its respective best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties hereto in doing, all things necessary, proper or advisable under applicable Laws and regulations to ensure that the conditions set forth in this Agreement are satisfied and to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including prosecuting confirmation of the Bankruptcy Plan notwithstanding the objection of any party in interest. Subject to the terms and conditions of this Agreement, the parties shall not take any action or refrain from taking any action, the effect of which would be to delay or impede the ability of Allegiance and Buyer to consummate the transactions contemplated by this Agreement, unless in such party's reasonable judgment, taking such action or refraining from action is consistent with achieving the ultimate objective of consummating the transactions contemplated hereby.

(b) Without limiting the generality of the foregoing, the parties hereto shall furnish to each other such necessary information and reasonable assistance, as each may request in connection with preparation and filing of applications and motion papers, including the Sale Motion needed to obtain Bankruptcy Court approval of the transactions contemplated by this Agreement.

6.14 HSR Act and General Governmental Consents.

(a) Subject to the terms and conditions of this Agreement, each of the parties hereto shall use its respective best efforts to (1) obtain from any Governmental Entity, any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made by Sellers or Buyer or any of their respective

Subsidiaries, or to avoid any action or proceeding by any Governmental Entity (including those in connection with the HSR Act), in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated herein, (2) subject to any restrictions under Antitrust Laws (as defined herein), to the extent practicable, (A) promptly notify each other of any communication to that party from any Governmental Entity with respect to this Agreement and the transactions contemplated hereby, (B) permit a Representative of the other party reasonably acceptable to the first party to attend and participate in meetings (telephonic or otherwise) with any Governmental Entity and (C) permit the other party to review in advance as reasonable, any proposed written communication to any Governmental Entity and (3) make all necessary filings (including to the extent applicable, appropriate filing of a notification and report form pursuant to the HSR Act on or prior to the date that is five (5) Business Days after the date of execution of this Agreement), and thereafter make any other required submissions, with respect to this Agreement and the transactions contemplated hereby under any applicable Law. Sellers and Buyer shall cooperate with each other in connection with the making of all such filings, including (i) providing all information required or appropriate for any application or other filing and (ii) as reasonably practicable, providing copies of all such documents to the other party and its advisors prior to filing and, if requested, accepting all reasonable additions, deletions or changes suggested in connection therewith.

(b) In furtherance and not in limitation of the foregoing, the parties shall use their best efforts to resolve such objections, if any, as may be asserted with respect to the transactions contemplated by this Agreement under any antitrust, competition or trade regulatory Laws of any Governmental Entity ("Antitrust Laws") The parties agree to take any action (including agreeing to hold separate or to divest any of the Acquired Assets (a "Designated Change") that may be required by or would otherwise resolve any objections made by (1) the applicable Governmental Entity (including the Antitrust Division of the United States Department of Justice or the Federal Trade Commission) in order to resolve any objections as such Governmental Entity or authority may have to such transactions under such Antitrust Law, or (2) by any domestic or foreign court or similar tribunal, in any suit brought by a private party or Governmental Entity challenging the transactions contemplated by this Agreement as violative of any Antitrust Law, in order to (i) avoid material delay in the closing of such transactions or (ii) avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order that has the effect of preventing the consummation of any of such transactions. The entry by a court, in any suit brought by a private party or Governmental Entity challenging the transactions contemplated by this Agreement as violative of any Antitrust Law, of an order or decree permitting the transactions contemplated by this Agreement, but requiring a Designated Change, or that would otherwise limit the Buyer's freedom of action with respect to, or its ability to retain, the Acquired Assets, shall not be deemed a failure to satisfy the conditions specified in Section 7.1(a) or Section 7.1(c) hereof. Notwithstanding any other provision of this Agreement, nothing herein shall require Buyer or any of its Affiliates to hold separate or to divest any of the businesses, product lines or assets of Buyer or its Affiliates.

(c) Buyer shall bear sole responsibility for all filing fees under the HSR Act

6.15 Bulk Sales Each of the parties hereto waives compliance with any applicable provisions of the Uniform Commercial Code Article 6 (bulk sales or bulk transfers) or analogous provisions of Law, as adopted in the states in which the Business is conducted, as such provisions may apply to the transactions contemplated by this Agreement

6.16 Sale Order Buyer and Sellers shall cooperate to obtain entry of the Sale Order. With respect to the Assumed Contracts, Buyer shall cooperate with Sellers to provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code

6.17 Competing Transaction

(a) Following the Sale Order Approval Date and until such time as this Agreement has been terminated (other than a termination by Sellers in violation of this Agreement), Sellers shall not, nor shall it authorize or permit any Representative of Sellers to, (A) directly or indirectly solicit, initiate or encourage the submission of any offer or proposal concerning any (x) sale, lease or other disposition directly or indirectly by merger, consolidation, business combination, share exchange, joint venture or otherwise, of any or all of the Acquired Assets, (y) issuance or sale of any equity interests in any Seller, or (z) transaction pursuant to which any Person will acquire beneficial ownership or the right to acquire beneficial ownership of equity interests in any Seller (any of the foregoing, a "Competing Transaction"), (B) directly or indirectly participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or take any other action to facilitate the making of, any proposal or expression of interest that constitutes or is reasonably likely to lead to a Competing Transaction, or (C) enter into any agreement with respect to any Competing Transaction.

(b) Allegiance shall not furnish information concerning their business, properties or assets to any third party, except (i) in the Ordinary Course of Business to potential and current vendors, customers and agents, (ii) to Governmental Entities or (iii) pursuant to a confidentiality agreement with terms and conditions no less restrictive than those contained in the Confidentiality Agreement as modified by Section 9.9 below. Allegiance shall not release any third party from, or waive any provision of, any such confidentiality agreement to which any Seller is a party other than to the extent a similar release or waiver was granted to Buyer. Sellers shall use reasonable efforts to promptly provide, or identify and make available to Buyer any non-public information concerning Sellers, the Acquired Assets or the Business provided to any other Person after the date hereof which was not previously provided to Buyer. To the extent that this Section 6.17(b) conflicts with the Bidding Procedures Order, the Bidding Procedures Order shall govern.

6.18 Disclosure Supplements Prior to the Early Funding Date, Sellers shall deliver updated Disclosure Schedules hereto with respect to any matter hereafter arising or any information obtained after the date hereof which, if existing, occurring or known at or prior to the date of this Agreement, would have been required to be set forth or described in the Disclosure Schedules, or which is necessary to complete or correct any information in such schedule or in any representation and warranty of Sellers which has been rendered inaccurate thereby. For purposes of determining the satisfaction of the conditions set forth in Article VII hereof, no such supplement or amendment shall be considered.

6.19 Communications Licenses Allegiance shall maintain the validity of the Communications Licenses and, except as disclosed on Schedule 4.9 of the Disclosure Schedules, comply in all material respects with all requirements of the Communications Licenses and the rules and regulations of the FCC and State PUCs. Allegiance shall use reasonable commercial efforts to (a) refrain from taking any action which may jeopardize the validity of any of the Communications Licenses or result in the revocation, surrender or any adverse modification of, forfeiture of, or failure to renew under regular terms, any of the Communications Licenses, (b) prosecute with due diligence any pending applications with respect to the Communications Licenses, including any renewals thereof, and (c) with respect to Communications Licenses, make all filings and reports and pay all fees necessary or reasonably appropriate for the continued operation of the Business, as and when such approvals, consents, permits, licenses, filings, or reports or other authorizations are necessary or appropriate.

6.20 FCC Applications/State PUC Applications

(a) As promptly as practicable after the execution and delivery of this Agreement and in no event later than three (3) Business Days after the date of execution of this Agreement, the parties hereto shall prepare and file, or cause to be prepared and filed, the necessary application or applications with the FCC seeking the FCC Consents. Each party shall provide the other party with all information necessary for the preparation of such applications on a timely basis, including those portions of such applications which are required to be completed by the first party.

(b) As promptly as practicable after the execution and delivery of this Agreement and in no event later than ten (10) Business Days after the date of execution of this Agreement, the parties hereto shall prepare and file, or cause to be prepared and filed, the necessary application or applications with the State PUCs seeking the State PUC Consents. Each party shall provide the other party with all information necessary for the preparation of such applications on a timely basis, including those portions of such applications which are required to be completed by the first party. In addition, the parties hereto shall cooperate to make any notice filings required in connection with this matter on a timely basis.

(c) Each of Buyer and Sellers (or the Operating Subsidiaries where applicable) shall bear its own expenses in connection with the preparation and prosecution of the FCC applications and the State PUC applications. Subject to the

terms and conditions of this Agreement, each of the parties hereto shall use its best efforts to prosecute the FCC applications and the State PUC applications in good faith and with due diligence before the FCC and the State PUCs and in connection therewith shall take such action or actions as may be necessary or reasonably required in connection with the FCC applications and the State PUC applications, including furnishing to the FCC and the State PUCs any documents, materials, or other information requested by the FCC and the State PUCs in order to obtain the FCC Consent and the State PUC Consents as expeditiously as practicable. In addition, to the extent practicable, the parties hereto shall use their best efforts to (i) promptly notify each other of any communication to that party from the FCC or any State PUC with respect to the FCC applications or the State PUC applications, as applicable, (ii) permit a Representative of the other party reasonably acceptable to the first party to attend and participate in meetings (telephonic or otherwise) with the FCC or any State PUC and (iii) permit the other party to review in advance, as reasonable, any proposed written communication to the FCC or any State PUC. No party hereto shall knowingly take, or fail to take, any action if the intent or reasonably anticipated consequence of such action or failure to act is, or would be, to cause the FCC or any State PUC not to grant approval of any FCC application or of any State PUC application or materially delay either such approval, to the material detriment of the other party.

6.21 Cooperation on Environmental Matters Sellers agree to cooperate with Buyer and to assist Buyer in identifying the permits required under Environmental Laws required by Buyer to operate the business from and after the Closing Date and either transferring existing Environmental Permits of Buyer, where permissible, or obtaining new Environmental Permits for Buyer (at Buyer's sole expense).

6.22 Intentionally Omitted

6.23 Non-Compete Covenants Sellers shall use its reasonable efforts to identify to Buyer those material Contracts containing Non-Compete Covenants within ten (10) Business Days following the date of this Agreement.

6.24 Use of Name Sellers hereby agrees that upon the consummation of the transactions contemplated hereby, Buyer shall be granted a license as set forth in the Operating Agreement to the name "Allegiance Telecom" or similar names, and any other names used in the business to be managed by Buyer pursuant to the Operating Agreement, or any service marks, trademarks, trade names, identifying symbols, logos, emblems or signs containing or comprising the foregoing or otherwise used in the business to be managed by Buyer pursuant to the Operating Agreement, including any name or mark confusingly similar thereto (collectively, the "Seller Marks") and Sellers shall not, and shall not permit any of their Affiliates to, use such name or any variation or simulation thereof, except in connection with the completion of the Cases. In furtherance thereof, upon expiration or termination of the Operating Agreement, Sellers shall remove, strike over or otherwise obliterate all Seller Marks from all materials owned by Sellers or the Operating Subsidiaries and used or displayed publicly including any sales and marketing materials, displays, signs, promotional materials and other materials. On or before the Closing, at Buyer's expense, Sellers shall take any action reasonably requested

by Buyer to perfect the chain of title in all of Sellers' registered trademarks used in the Business

6.25 Further Assurances Buyer shall use commercially reasonable best efforts to obtain any material Governmental Entry License, approval or consent reasonably necessary to operate as a local exchange carrier in any jurisdiction where the Business is operated and Buyer represents and warrants that it or its Affiliate has and, Buyer shall, maintain through the Closing Date such License, approval or consent in California, Illinois, Michigan and Texas

6.26 Colocation/PRI Services Agreement At the Early Funding Date, if requested by ATC and subject to Bankruptcy Court approval, ATCW or an Affiliate of ATCW and Buyer shall enter into a Master Services Agreement (the "Master Services Agreement"), pursuant to which Buyer shall provide colocation, primary rate interface and other services to ATCW (or such Affiliate) on terms specified on Schedule 6.26 of the Disclosure Schedules and as otherwise mutually satisfactory to ATCW and Buyer

6.27 Operation of Acquired Assets Upon the Early Funding Date and Buyer's funding of the Purchase Price Escrow Amount and the Adjustment Escrow Amount into the Purchase Price Escrow Account and the Adjustment Escrow Account, respectively, Buyer shall operate the Acquired Assets in accordance with the Operating Agreement, provided, however, that Buyer shall not assume any management or control of Sellers' bankruptcy estate or the Bankruptcy Plan process

6.28 Registration Rights Buyer agrees to use its best efforts to ensure that the issuance and distribution of the XO Common Stock complies with Section 1145 of the Bankruptcy Code

(a) If Buyer is unable to obtain assurance to its satisfaction that the issuance of the XO Common Stock will be exempt from registration under Section 5 of the Securities Act, as provided in section 1145 of the Bankruptcy Code, Buyer will promptly and diligently file and cause to become effective, a registration statement registering the XO Common Stock under the Securities Act of 1933, as amended

(b) Buyer hereby agrees to cause its legal counsel to issue an opinion reasonably requested by its transfer agent with respect to the issuance of the XO Common Stock, including an opinion that no legend restricting the transfer of such XO Common Stock is required

6.29 Buyer Shareholder Approval

Prior to the Early Funding Date, Buyer shall obtain the approval of its shareholders to the extent required to issue the XO Common Stock (the "Shareholder Approval"). Buyer shall give prompt written notification to Sellers when the Shareholder Approval is obtained

6.30 Sellers' Disposition of XO Common Stock



Sellers agree that they will not dispose of the XO Common Stock except pursuant to the Bankruptcy Plan

6.31 Tax Matters

(a) Sellers shall use commercially reasonable efforts to provide good faith estimates, prior to the Closing Date, of (i) the adjusted basis in the Acquired Assets (or the amount of any excess loss accounts), (ii) each Operating Subsidiary's adjusted basis in its assets and properties, (iii) the amount of any net operating loss, net capital loss, unused investment or other credits, unused foreign tax credit, or excess charitable contribution (and the carryovers of any of the foregoing) allocable to the Operating Subsidiaries, as well as any limitations that might apply and (iv) the amount of any deferred gain or loss allocable to the Operating Subsidiaries arising out of any intercompany transactions

(b) At Buyer's written request, Sellers shall consider such tax elections and other actions with respect to the Operating Subsidiaries that will not adversely affect Sellers, including any election or elections under Section 338(h)(10) of the Internal Revenue Code of 1986, as amended

(c) Buyer shall make a reasonable determination of the income tax treatment of the transactions contemplated by this Agreement, (including without limitation whether the transaction qualifies for a reorganization under Section 368 of the Internal Revenue Code of 1986, as amended), and so long as such determination is not adverse to Sellers, Sellers shall file all tax returns in a manner consistent with such determination

ARTICLE VII  
CONDITIONS TO OBLIGATIONS OF THE PARTIES

7.1 Conditions Precedent to Obligations of Buyer and Sellers The respective obligations of Buyer, on the one hand, and Sellers, on the other hand, on the Early Funding Date shall be subject to the satisfaction or waiver at or prior to the Early Funding Date of the following conditions:

(a) No Injunction No preliminary or permanent injunction or other order issued by, and no Litigation or Order by or before any United States Governmental Entity nor any Law or Order promulgated or enacted by any United States Governmental Entity shall be in effect or pending which materially delays, restrains, enjoins or otherwise prohibits or seeks to restrain, enjoin or otherwise prohibit the transactions contemplated hereby, provided that with respect to pending Litigation, such condition shall only apply to Litigation commenced by a Governmental Entity

(b) The Sale Order The Bankruptcy Court shall have entered the Sale Order, which approves this Agreement and all of the terms and conditions hereof and authorizes Allegiance to consummate the transactions contemplated hereby. The Sale Order shall provide that (A) this Agreement results from Sellers having completed a full and complete auction process and, so long as the Agreement has not been

terminated in accordance with its terms, Sellers shall not be entitled to entertain or enter into a Competing Transaction, (B) the Acquired Assets sold to Buyer pursuant to this Agreement shall be transferred to Buyer free and clear of all Liens (other than Permitted Liens of the type included in clause (C) of the definition of Permitted Liens) and Liabilities of any Person (other than Assumed Liabilities) such Liens and Liabilities to attach to the Purchase Price payable pursuant to Section 3.2(a), (D) the Regulatory Transition Process is approved pursuant to sections 105, 363 and 365 of the Bankruptcy Code, (E) Buyer has acted in good faith within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby, (F) this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm's length bargaining positions, (G) Buyer is not acquiring or assuming any of Sellers' or any other Person's Liabilities except as expressly provided in this Agreement and in no event shall Buyer have any Liability or responsibility for any Excluded Liability, (H) the transactions contemplated herein shall be exempt from stamp, transfer, or similar taxes to the extent provided by Section 1146(c) of the Bankruptcy Code, (I) Buyer will not have any successor or transferee liability for liabilities of Sellers (whether under federal or State law or otherwise) as a result of the sale, purchase, transfer or assignment of the Acquired Assets, and will be exempt from any so-called "bulk sale" laws in all applicable jurisdictions; (J) all Assumed Contracts shall, at Closing, be assumed by Sellers and assigned to Buyer pursuant to section 365 of the Bankruptcy Code and, as required by this Agreement, Sellers shall be obligated to pay all Cure Amounts in respect thereof, in accordance with this Agreement, (K) Buyer will have the right to participate in any of Sellers' negotiations and settlements regarding ILEC and Non-ILEC Cure Amounts in accordance with Section 3.5, (L) in accordance with Section 3.5 Buyer will have standing to participate in any disputes before the Bankruptcy Court regarding ILEC and non-ILEC Cure Amounts, (M) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof as provided in Section 9.12 hereof, (N) all Liens held by Sellers' senior secured lenders on the Non-Transferred Assets shall be released at the Closing and the Buyer shall be granted a Lien on all Non-Transferred Assets pending FCC Consent and State PUC Consent, as applicable and (O) this Agreement and the transactions and instruments contemplated hereby shall be specifically performable and enforceable against and binding upon, and not subject to rejection or avoidance by, Sellers or any chapter 7 or chapter 11 trustee of Sellers and its estate. Sellers shall provide each applicable taxing authority in each jurisdiction in which it is subject to Tax with copies of any motion for entry of the Sale Order at least 10 days prior to the hearing on such motion. In the event that the Bankruptcy Court does not approve the Sale Order, Buyer shall, within one (1) Business Day, decide and inform Sellers and the Bankruptcy Court and communicate to Sellers whether Buyer consents to the Sale Order, as modified. For the avoidance of doubt, if Buyer consents to modifications to the Sale Order, then Buyer agrees that the condition in Section 7.1(b) has been satisfied.

(c) HSR Act. Any applicable waiting period under the HSR Act shall have expired or shall have been earlier terminated.

(d) Purchase Price Escrow Agreement ATI, ATCW and Buyer shall have entered into the Purchase Price Escrow Agreement and such agreement shall be in full force and effect

7.2 Conditions Precedent to Obligations of Buyer The obligation of Buyer to fund on the Early Funding Date is subject to the satisfaction (or waiver by Buyer) at or prior to the Early Funding Date of each of the following additional conditions

(a) Accuracy of Representations and Warranties The representations and warranties of Sellers contained herein shall be true and correct, without regard to any qualifications concerning materiality or Material Adverse Effect, as of the Early Funding Date (or, if made as of a specific date, at and as of such date), with the same force and effect as though such representations and warranties had been made on and as of the Early Funding Date, except where the effect of all such inaccuracies of representations and warranties would not reasonably be expected to, in the aggregate, have a Material Adverse Effect

(b) Performance of Agreements Sellers shall have performed and complied in all material respects with all material covenants and material agreements contained in this Agreement required to be performed or complied with by them prior to or on the Early Funding Date.

(c) Officer's Certificate Buyer shall have received a certificate, dated the Early Funding Date, of an officer of Sellers to the effect that the conditions specified in Sections 7.2(a) and (b) above have been fulfilled

(d) [Intentionally Omitted].

(e) Sellers' Deliveries Sellers shall have delivered to Buyer all items set forth in Section 3.1(b)

(f) Assumed Contracts (i) All Contracts set forth on Schedule 7.2(f) of the Disclosure Schedules relating to the Sellers, or the extent an Early Closing Election is delivered, the Operating Subsidiaries, shall have been assumed and validly assigned to Buyer, such assignment to be effective as of the Closing Date, (and Sellers and the Operating Subsidiaries, if applicable, shall have obtained all consents, waivers and approvals (if any) necessary for such assumption and/or assignment) and (ii) all of the other Assumed Contracts (other than those set forth on Schedule 2.6 of the Disclosure Schedules or Exhibit A to Schedule 4.5 of the Disclosure Schedules) shall have been assumed by the applicable Seller and, to the extent an Early Closing Election is delivered the applicable Operating Subsidiary, and assigned to Buyer, such assignment to be effective as of the Closing Date, (and Sellers and Operating Subsidiaries, if applicable, shall have obtained all consents, waivers and approvals (if any) necessary for such assumption and/or assignment), except, in the case of this clause (ii), where the failure to assume and assign such Contracts would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect

(g) Operating Agreement Sellers and Buyer shall have executed and delivered the Operating Agreement (the "Operating Agreement") attached hereto as Exhibit H and such agreement shall be in full force and effect

7.3 Conditions Precedent to the Obligations of Sellers The obligation of Sellers to enter into the Operating Agreement on the Early Funding Date is subject to the satisfaction (or waiver by Sellers) at or prior to the Early Funding Date of each of the following additional conditions

(a) Accuracy of Representations and Warranties The representations and warranties of Buyer contained herein shall be true and correct, without regard to any qualifications concerning materiality or material adverse effect, as of the Early Funding Date (or, if made as of a specific date, at and as of such date), with the same force and effect as though such representations and warranties had been made on and as of the Early Funding Date, except where the effect of all such inaccuracies of representations and warranties would not reasonably be expected to, in the aggregate, have a material adverse effect on Buyer

(b) Performance of Agreements Buyer shall have performed and complied in all material respects with all material covenants and material agreements contained in this Agreement required to be performed or complied with by it prior to or at the Early Funding Date

(c) Officer's Certificate ATI shall have received a certificate, dated the Early Funding Date, of an officer of Buyer to the effect that the conditions specified in Sections 7.3(a) and (b) above have been fulfilled

(d) Transition Services Agreement for Shared Technologies Shared Technologies and Buyer shall have entered into a Transition Services Agreement (the "Transition Services Agreement") in the form of Exhibit 7.3(d) attached hereto.

(e) The Voting Agreement shall remain in full force and effect and Cardiff Holding LLC shall not be in breach thereof

(f) Shareholder Approval Buyer shall have obtained shareholder approval necessary to issue the XO Common Stock

(g) Operating Agreement Sellers and Buyer shall have executed and delivered the Operating Agreement attached hereto as Exhibit H, and such agreement shall be in full force and effect.

(h) Master Services Agreement. Buyer and ATCW (or an Affiliate thereof) shall have executed and delivered the Master Services Agreement, if applicable, and such agreement shall be in full force and effect.

7.4 Conditions Precedent to Closing. The obligation of Buyer and Sellers to close under this Agreement is subject to the satisfaction (or waiver by Sellers) at or prior to the Closing Date of each of the following additional conditions:

(a) Approval of Plan (i) All conditions to the "Effective Date" set forth in the Bankruptcy Plan (including the entry of the Confirmation Order by the Bankruptcy Court) shall have been satisfied or duly waived with the express written consent of Buyer, such consent not to be unreasonably withheld, in accordance with the applicable provisions of the Bankruptcy Plan and (ii) the transactions contemplated by the Bankruptcy Plan to occur on or prior to the Closing shall have been or shall be consummated simultaneously with the Closing in accordance with the Bankruptcy Plan provided that in the event of the delivery by either Buyer or Seller of an Early Closing Election this Section 7.4(a) shall be deemed waived by both Buyers and Sellers

(b) Non-Transferred Assets The Non-Transferred Assets shall have been retained by Sellers

(c) Sellers' Deliveries Sellers shall have delivered to Buyer all items set forth in Section 3.1(b)

(d) Buyer's Deliveries Buyer shall have delivered to Sellers all items set forth in Section 3.1(c)

#### 7.5 Satisfaction of All Closing Conditions, Early Funding Date

After the Early Funding Date, Section 7.1, Section 7.2, and Section 7.3 shall be deemed to be satisfied in their entirety and upon an Early Closing Election or satisfaction of the condition set forth in Section 7.4(a), Buyer's and Sellers' obligations to close the transactions contemplated by this Agreement will be unconditional

### ARTICLE VIII TERMINATION

8.1 Termination of Agreement This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing

(a) By mutual written consent of Buyer and ATI,

(b) By Buyer or ATI if neither the Early Funding Date nor the Closing Date shall have occurred on or before August 18, 2004; provided, however, that if neither the Early Funding Date nor the Closing shall have occurred on or before such date due to a breach of this Agreement by Buyer or any Seller, Buyer or ATI (if a Seller is the breaching party), as the case may be, may not terminate this Agreement pursuant to this Section 8.1(b);

(c) By Buyer, immediately if any of the following shall have occurred

(i) Any Seller (A) agrees in writing, (B) publicly announces its intention (including by selecting a competing bidder at the Bankruptcy Court's auction

relating to the transactions contemplated hereby), or (C) is authorized by its board of directors to proceed with a Competing Transaction, irrespective of whether such Competing Transaction is approved by the Bankruptcy Court and/or consummated.

(ii) Prior to the Closing, any Seller abandons or files a motion with the Bankruptcy Court to abandon all or any material portion of the Acquired Assets.

(iii) Prior to the Closing, any Seller files any plan of reorganization other than the Bankruptcy Plan, files any material amendment to the Bankruptcy Plan, withdraws the Bankruptcy Plan or consents to the reduction of the Exclusivity Period or fails timely to file motions to obtain orders of the Bankruptcy Court extending the Exclusivity Period or the Bankruptcy Court denies confirmation of the Bankruptcy Plan, provided, however that to the extent either Sellers or Buyer has delivered an Early Closing Election, this Section 8.1(c)(iii) shall be inapplicable,

(iv) The Bankruptcy Court terminates the Exclusivity Period or declines to extend the Exclusivity Period, provided, however, that to the extent either Sellers or Buyer shall have delivered an Early Closing Election, this Section 8.1(c)(iv) shall be inapplicable,

(v) The voluntary dismissal or conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code, or

(vi) Upon the appointment in the Cases of a trustee or examiner with managerial powers under section 1104 of the Bankruptcy Code, or

(vii) Prior to the Early Funding Date, any Order is entered by the Bankruptcy Court which would result in the failure of any of the conditions to the obligations of Buyer set forth in Section 7.1 or 7.2, provided, that following the Early Funding Date, this Section 8.1(c) shall have no further force or effect.

(d) By Sellers, on the one hand, or Buyer, on the other, if Buyer or Sellers, as the case may be, materially breach any of its covenants under this Agreement, unless such breach shall be cured within ten (10) Business Days after such other party shall have received notice of such breach in accordance with the terms hereof

(e) Prior to the Early Funding Date, by Buyer if there is a breach of any representation or warranty contained in Article IV hereof (without regard to any qualifications concerning materiality or Material Adverse Effect contained in Article IV), which breach, in the aggregate with all other such breaches, if any, would give rise to a failure of the condition set forth in Section 7.2(a) (with the date of such termination being substituted for the references to Early Funding Date therein) and which breach could not reasonably be expected to be cured using reasonable efforts by the date set forth in Section 8.1(b); provided, that following the Early Funding Date, this Section 8.1(e) shall have no further force or effect.

8.2 Effect of Termination. In the event of termination of this Agreement pursuant to this Article VIII, written notice thereof shall be given to the other party of this Agreement as promptly as practicable and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by Buyer or Sellers. If this Agreement is terminated as provided herein there shall be no liability or obligation on the part of Sellers or Buyer, unless (i) this Agreement is terminated (A) by Buyer pursuant to Section 8.1(b) when ATI does not have the right to terminate this Agreement pursuant to Section 8.1(b) due to breach of the Agreement by Sellers, or (B) by Buyer pursuant to Section 8.1(c) or (d), or (ii) Buyer terminates this Agreement pursuant to Section 8.1(e) as a result of Sellers' gross negligence or willful, wanton or reckless action or inaction taken or not taken with an intent to cause the termination of this Agreement or otherwise negatively impact the transactions contemplated hereby (collectively, a "Sellers' Intentional Breach") or Buyer elects not to close because the condition set forth in Section 7.2(a) has not been satisfied as a result of a Sellers' Intentional Breach, provided, however, that with respect to any such termination of this Agreement pursuant to Section 8.1(b), (c) or (d) following the Sale Order Approval Date, or (ii) Buyer's election to terminate this Agreement pursuant to Section 8.1(c) or not to close, in each case because the condition set forth in Section 7.2(a) has not been satisfied, as a result of a Sellers' Intentional Breach following the Sale Order Approval Date, Buyer shall be entitled to terminate this Agreement immediate payment, as liquidated damages and not as a penalty, of (i) the Expense Reimbursement (which Expense Reimbursement shall not exceed \$10 million) and (ii) \$30 million (the "Liquidated Damages"). Sellers and Buyer acknowledge that the damage suffered by the Buyer in the event of any such termination would be impossible to calculate, and the Liquidated Damages constitutes a reasonable estimate of such damages. In the event prior to the Early Funding Date Buyer terminates this Agreement pursuant to Section 8.1(e) or elects not to close, in each case because the condition set forth in Section 7.2(a) has not been satisfied as a result of some reason other than a Sellers' Intentional Breach, Buyer shall be entitled to immediate payment of the Expense Reimbursement (which Expense Reimbursement shall not exceed \$5 million). Except as provided in Section 9.14, Buyer's sole and exclusive remedy under this Agreement shall be limited to the recovery of the amounts set forth in this Section 8.2. None of the amounts payable under this Section 8.2 or 8.3 shall prime the Liens held by the Sellers' senior secured lenders and any such amounts payable shall be subordinate to the carve out for professional fees and fees under 28 U.S.C. § 1930 as provided in the Bankruptcy Court's order authorizing Sellers to use cash collateral that was entered in the Cases.

### 8.3 Bankruptcy Events.

(a) At anytime prior to Closing, Sellers in their sole discretion, after consultation with the statutory committee of unsecured creditors appointed in the Chapter 11 Cases and the Sellers' pre-Petition senior lenders, may deliver an Early Closing Election to Buyer.

(b) In the event that Sellers fail to comply with the timeline set forth on Exhibit J, or at anytime from and after June 30, 2004 and prior to Closing, Buyer may deliver an Early Closing Election to Sellers.

(c) In the event an Early Closing Election is delivered pursuant to the terms hereof, the provisions of Section 3.5 hereof shall apply, provided, however, that Sellers shall serve, at least twenty (20) days prior to the Closing the notice of Sellers' intent to assume and assign the Assumed Contracts on all non-debtor parties to the Assumed Contracts rather than at least twenty (20) days prior to the hearing to confirm the Bankruptcy Plan. Within three (3) Business Days of receipt by Sellers or Buyer, as applicable of an Early Closing Election notice Buyer will provide to Sellers a list of Executory Contracts to be assumed by Allegiance and in the case of Sellers, assigned to Buyer (the "Additional Assumed Contracts") and Sellers shall immediately notify the counterparties to such Additional Assumed Contracts substantially in the form of notice attached to the Sale Order. Except as provided above, the Closing following an Early Closing Election shall occur no sooner than twenty (20) Business Days after the delivery of such notice. For the avoidance of doubt to the extent the Early Closing Election is exercised, Section 7.4(a) shall have no further force and effect. For the purposes of this Agreement "Early Closing Election" shall mean the delivery by Sellers to Buyer or by Buyer to Sellers, as applicable, of a written irrevocable election to close the transactions contemplated by this Agreement pursuant to an asset sale rather than a sale of stock of the direct Subsidiaries of ATCW. To the extent an Early Closing Election is delivered, the Operating Subsidiaries shall be deemed to constitute Sellers under this Agreement and each Operating Subsidiary shall sell its assets to Buyer. Notwithstanding anything to the contrary contained herein, the Bankruptcy Plan shall provide that Buyer is not assuming liabilities of the Operating Subsidiaries of the types and in the nature of those listed in Section 2.4 in connection with Buyer's acquisition of the stock of the Operating Subsidiaries in accordance with the terms and conditions hereof.

## ARTICLE IX MISCELLANEOUS

9.1 Expenses Except as set forth in this Agreement (e.g., Liquidated Damages provisions and the expense sharing arrangements set forth in Sections 2.6, 2.7 and 6.10) and whether or not the transactions contemplated hereby are consummated, each party shall bear its own costs and expenses incurred or to be incurred by such party in connection with this Agreement and the consummation of the transactions contemplated hereby.

9.2 Assignment Neither this Agreement nor any of the rights or obligations hereunder may be assigned by Sellers without the prior written consent of Buyer, or by Buyer without the prior written consent of ATI; provided, however, that, Buyer may assign its rights and obligations hereunder, in whole or in part, to any wholly-owned Subsidiary of Buyer, provided that no such assignment shall relieve Buyer of its liabilities and obligations hereunder if such assignee does not perform such obligations and provided, further that this Agreement may be assigned to one or more trustees appointed by the Bankruptcy Court to succeed to the rights of Sellers. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and except as otherwise expressly provided herein, no other Person shall have any right, benefit or obligation hereunder.



9.3 Parties in Interest This Agreement shall be binding upon and inure solely to the benefit of Sellers and Buyer, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. Without limiting the foregoing, no direct or indirect holder of any equity interests or securities of either Sellers (other than Sellers themselves) or Buyer (whether such holder is a limited or general partner, member, stockholder or otherwise), nor any Affiliate of either Sellers or Buyer, nor any Representative or other controlling person of each of the parties hereto and their respective Affiliates shall have any liability or obligation arising under this Agreement or the transactions contemplated thereby.

9.4 Notices Unless otherwise provided herein, any notice, request, instruction or other document to be given hereunder by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission (with such facsimile transmission confirmed by sending a copy of such notice, request, instruction or other document by certified mail, return receipt requested, or overnight mail) or mailed by certified mail, postage prepaid, return receipt requested (such mailed notice to be effective on the date such receipt is acknowledged), as follows:

If to Sellers:

c/o Allegiance Telecom, Inc.  
700 E. Butterfield Road, Suite 400  
Lombard, IL 60148  
Attention: Mark B. Tresnowski, Esq.  
Executive Vice President, General Counsel and  
Secretary  
Fax: (630) 522-5250

With a copy to (which shall not constitute notice):

Kirkland & Ellis LLP  
153 East 53rd  
New York, NY 10022  
Attention: Jonathan S. Henes, Esq.  
Kimberly Taylor, Esq.  
Fax: (212) 446-4900

If to Buyer:

XO Communications, Inc.  
11111 Sunset Hills Road  
Reston, Virginia 20190  
Attention: General Counsel  
Fax: (703) 547-2025

With a copy to (which shall not constitute notice):